

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION  
MINUTES OF THE MEETING, Public Session

Friday, April 6, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:40 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox and Carol Scott were present.

Chairman Getman announced that the Los Angeles Ethics Commission requested that agenda item #3, the *In re Pelham* Opinion, be postponed for a month, and be considered at the May 2001 FPPC Commission meeting.

Chairman Getman announced that agenda item #9, *In the Matter of Robert Prenter and the Committee to Elect Robert Prenter for Assembly*, was being deleted from the April agenda and would be considered at the May 2001 FPPC Commission meeting.

**Item #1. Approval of the Minutes of the March 9, 2001, Commission Meeting.**

The minutes of the March 9, 2001 Commission meeting were distributed to the Commission and made available to the public. There being no objection, the minutes were approved.

Commissioner Scott requested that the minutes of the January meeting reflect that she was in attendance at the meeting.

**Item #2. Public Comment.**

There was no public comment at this time.

**Item #3. Adoption of In re Pelham Opinion, O-00-274.**

This item was postponed until the May 2001 meeting.

**Item #4. Discussion of Annual Technical Clean-up Packet: Discussion of Proposed Amendments to Regulations 18406, 18427.1, 18723 and 18960 and Repeal of Regulation 18416.**

Legal Analyst Kelly Winsor presented a package of technical clean-up amendments of regulations based on the legislative amendments made in January 2001 for prenotice discussion.

Ms. Winsor added that these amendments would be presented for adoption at the June 2001 Commission meeting.

There was no objection from the Commission.

### **ENFORCEMENT MATTERS**

**Item #9. In the Matter of Robert Prenter and the Committee to Elect Robert Prenter for Assembly, FPPC No. 96/304.**

This item postponed until the May 2001 Commission meeting.

**Items #6, #10, #11, #12, #13, #14, #15, #16, #18, and #20.**

There being no objection, the following items were approved on the consent calendar:

**Item #6. In the Matter of Traditional Values Coalition, FPPC No. 99/84.** (3 counts.)

**Item #10. In the Matter of Richard L. Dickerson, Dickerson for Assembly and Mary J. Meisner, treasurer, FPPC No. 98/590.** (5 counts.)

**Item #11. In the Matter of Michela A. D. Alioto, Michela Alioto for California Secretary of State, and Linda T. Blum, FPPC No. 00/065.** (1 count.)

**Item #12. In the Matter of Dennis Sammut and Artichoke Joe's, FPPC No. 00/362.** (1 count.)

**Item #13. In the Matter of Mirage Resorts, Inc., FPPC No. 00/362.** (1 count.)

**Item #14. In the Matter of Carl Washington, Carl Washington For Assembly, and Pam Goodwin, treasurer, FPPC No. 00/362.** (1 count.)

**Item #15. In the Matter of Oaks Card Club, FPPC No. 00/362.** (1 count.)

**Item #16. In the Matter of Bay Meadows Operating Company, FPPC No. 00/362.** (1 count.)

**Item #18. In the Matter of Dario Frommer, Dario Frommer for Assembly, and Stephen Kaufman, FPPC No. 00/345.** (1 count.)

**Item #20. In the Matter of Janice C. Leja, Leja for Assembly, and Doug Leja, Treasurer, FPPC No. 2000/348.** (1 count.)

**Item #5. In the Matter of Ricardo Ramirez, FPPC No. 97/654.** (4 counts.)

Senior Commission Counsel Melodee Mathay presented the case, explaining that Mr. Ramirez had financial difficulties and a payment schedule for the fine had been set up. She stated that the money laundering occurred in the 1995 mayoral election in San Francisco and that Mr. Ramirez made contributions, through employees and relatives, to San Francisco Mayoral candidate Willie Brown.

Commissioner Scott stated that she did not believe that the Commission should consider the ability to pay a fine when determining the amount of a fine. The factors in aggravation indicated that the violations were deliberate and were among the most serious types of violations of the Act, and questioned why the fines appeared to have been lowered.

Acting Enforcement Chief Wayne Strumpfer responded that the Enforcement Division rarely considers the ability to pay, but that this case was unique because it was criminally prosecuted by the San Francisco District Attorney's office. The case was diverted and the respondent served 25 hours of community service.

Mr. Strumpfer explained that when violations of the PRA are criminally prosecuted, the Commission has directed staff not to pursue the cases administratively because it could create a double-jeopardy situation. Since the respondent was not convicted, however, staff pursued the case, and considered the punishment already received by the respondent as a mitigating factor.

Commissioner Scott agreed that the Commission had directed staff not to pursue cases administratively or civilly if the case was being criminally prosecuted, but noted that the policy should be used on a case-by-case basis. She did not agree that a double-jeopardy situation existed in all of these types of cases. She asked that Enforcement not consider this as policy for future cases.

Ms. Mathay noted that Mr. Ramirez went through the criminal process, but that staff did not consider 25 hours of community service as adequate punishment for the violations. She also explained that this was an isolated incident.

Chairman Getman motioned approval of item #5. Commissioner Downey seconded the motion. Chairman Getman, Commissioners Downey, Knox and Scott voted "aye." The motion carried.

**Item #7. In the Matter of Don R. Perata and Don Perata 98, FPPC No. 2000/156.** (2 counts.)

Chairman Getman asked that Enforcement Division explain why the resolution to this case was considered appropriate, and why the punishment was considered severe enough for the violations.

Senior Staff Counsel Mark Soble responded that this case represented the first proposed enforcement fine for a statewide contribution limit violation in the state's history. However, staff recognized that the case also represented a very serious violation that occurred during a time period of tragic personal circumstances for the respondent.

Mr. Soble explained the facts of the case, noting that Senator Perata accepted a \$90,000 loan from his father for his campaign and that his father died fifteen days later. He noted that only loans of \$1,000 or less were allowed under special election limits. Additionally, Senator Perata erroneously reported that he made the loan to his campaign.

Mr. Soble stated that Senator Perata indicated that he and his father viewed the loan as Senator Perata's inheritance. He reported that the Franchise Tax Board auditor indicated that Senator Perata's campaign cooperated fully with the audit and that it appeared to be an honest mistake. He noted that staff had difficulty believing that an experienced candidate would be unaware that this constituted a violation, but recognized that the tragic personal circumstances of the Senator at the time of the violation may have been a factor.

Mr. Soble stated that the only direct evidence that Senator Perata's father knew that the money was intended for the campaign, was Mr. Perata's admission of that fact to staff. Had Senator Perata not made that admission, staff would have been limited to the circumstantial timing of the loan as evidence. Staff weighed that admission when they determined the amount of the fine.

Mr. Soble noted that Senator Perata admitted that he would have been able to get a loan by other means, but was busy caring for his father and did not have time for the loan process. Therefore, this was similar to a "loan guarantee" situation. He explained that Senator Perata's attorney argued that Senator Perata's father could have gifted the money to the son under a lifetime exception, but that staff was not very persuaded by that argument.

Mr. Soble stated that the election was very close, and that even though it was likely that the public would not have been surprised if Senator Perata's father wholeheartedly supported his son in the election, the access to the additional money may have had a substantive impact on the election.

Mr. Soble stated that the FTB auditor and FPPC Investigator Bonnie Swaim did an outstanding job on the case.

Chairman Getman stated her concern that, even though she was sympathetic to Senator Perata's personal circumstances, she did not believe that it was an acceptable excuse for the violation. She consider this an extremely egregious violation of the Act, especially given the closeness of the election, and preferred that the case had been pursued as a civil action which would have allowed the penalty to be increased beyond \$2,000.

Mr. Soble responded that staff considered pursuing the case as a civil action. He noted that the penalty would have been the same for the contribution limit violation, however the amount not properly reported could have been pursued civilly. Staff considered all of the circumstances of the case, including the resources that would have been required to pursue a civil action, and ultimately decided to recommend an administrative resolution of the matter.

Chairman Getman noted that another cycle of contribution elections for statewide candidates was beginning, and that she did not want to send a signal that exceeding contribution limits in a close race right before an election would not be considered as serious as other violations, such as money laundering. She believed that the Commission should make it clear to the public that this type of conduct is very serious.

Commissioner Scott noted that she had just spoken with someone who indicated that it might be worth the cost of the penalty to get the contribution.

Chairman Getman asked that staff handle this type of case differently in the future, noting that Proposition 34 will allow imposition of higher fines.

Mr. Strumpfer pointed out that it is important for staff to consider pursuing cases civilly more often than has been done in the past.

Commissioner Downey stated that the Commission was protected in this case because of the special circumstances of the case. He explained that Senator Perata should have known better, but that there did not appear to be a mass deception of the electorate, and that the money could have been obtained legitimately. He stated that the Commission could support staff's recommendation only because it was a special, isolated and unusual set of factual circumstances, and there was relative absence of voter deception.

In response to a question, Mr. Soble stated that Senator Perata's father could have gifted the \$90,000 to Senator Perata and there would not have been a violation as long as his father did not know that the money would be used for Senator Perata's campaign.

Chairman Getman motioned that the stipulation be approved. Commissioner Knox seconded the motion. Chairman Getman, Commissioners Scott, Downey and Knox voted "aye." The motion carried.

**Item #8. In the Matter of California League of Conservation Voters and Fredric D. Woocher, FPPC No. 98/734. (1 count.)**

Senior Commission Counsel Deanne Canar gave a brief presentation of the case.

Commissioner Scott asked how the determinations of the counts and fines were made.

Ms. Canar stated that this was the fourth time that this committee had violated the Act. In 1991 the Commission fined the committee \$4,000, and warning letters were issued in both the June 1994 audit period and the August 1995 audit period for numerous campaign reporting violations. The nature of the violations outlined in the warning letters was identical to the violations set forth in the stipulation.

In response to a question from Commissioner Scott, Ms. Canar noted that no response was required to the warning letters.

Mr. Strumpfer explained that warning letters notify the respondent that they have violated the Act, and explain why the Commission is not pursuing a case against them. Warning letters also notify respondents that the violation will be considered by enforcement staff if the respondent repeats the violation.

Ms. Canar explained that the counts were consolidated into categories by enforcement staff in an effort to find the appropriate fine for the offenses. She explained the violations that were consolidated into the categories, noting that count 7 could have included up to 100 counts if staff had not determined that it would be more appropriate to determine the fine by consolidating the counts into the one category.

Commissioner Scott asked whether the case represented deliberate violations or just mistakes.

Mr. Strumpfer responded that the prior violations indicate that the violations were at least intentionally negligent.

Chairman Getman motioned that the stipulation be approved. Commissioner Knox seconded the motion.

Commissioner Scott stated that she would vote for the motion, but that she thought the fine was high, and that staff should work with the Public Education Unit so that people do not continue to make these types of mistakes. She noted that the goal is to get information to the voters quickly.

Mr. Strumpfer stated that the goal is compliance so that the information can be given to the voters.

Commissioner Scott responded that fining the respondent does not get the information to the voters in time for the election.

Chairman Getman noted that the current Enforcement Program will get the information to the voters in a more timely manner. She noted that this case involved a committee that repeated the same types of violations four times and that the respondents were contacted each time, and that she supported the proposed fines.

Commissioner Scott stated that she would rather see a positive approach because the public needs to get the late contribution information before the election. She supported enforcement, but believed an approach to get the information to the public should also be pursued.

Mr. Strumpfer agreed with Commissioner Scott's concern, but did not believe that this case represented a good example of the issue.

Chairman Getman, Commissioners Scott, Downey and Knox voted "aye." The motion carried.

**Item #17. In the Matter of Lucky Chances Inc., FPPC No. 00/362. (1 count.)**

Senior Commission Counsel Amy Holloway explained that Common Cause filed a complaint in June 2000 alleging that the respondent had failed to file a major donor statement during the 1998 period. After being contacted by FPPC Enforcement staff, the respondent voluntarily filed the major donor report. While reviewing their records for the major donor report, Lucky Chances Inc. discovered additional unreported late contributions for 2000, and filed the report for that period also. They had filed a Lobbyist Employer Report in a timely manner and had disclosed the contributions on those reports, but the activity should have been filed on a major donor report. Since those reports are not filed in the same manner or the same place as the campaign statements, the information is not as readily available to the public. Staff found a late contribution reporting violation and charged that count too. The fines proposed are consistent with the late contribution enforcement policy and with the other major donor cases that resulted from the Common Cause complaint.

Ms. Holloway stated that Lucky Chances Inc. never filed the late contribution report. She noted that staff does not request the late contribution report if the election has already happened because that information is included on the semi-annual statement.

Ms. Holloway explained that Common Cause identified statements or contributions that were not reported and that staff was able to substantiate some of those allegations. Some violations were discovered by the respondents, but might have been found through the current major donor and late contribution program.

Chairman Getman motioned that the stipulation be approved. Commissioner Knox seconded the motion. Chairman Getman, Commissioners Scott, Downey and Knox voted "aye." The motion carried.

**Item #19. In the Matter of Marvin Kay, FPPC No. 00/434. (2 counts.)**

Commission Counsel Steve Meinrath introduced the stipulation.

Commissioner Downey asked how the fine amount of \$2,500 was arrived at, noting that the respondent in this case knew better and was warned.

Mr. Meinrath responded that the streamlined major donor and late contribution program would have allowed for a fine slightly less than the \$2,500 fine if Mr. Kay had been willing to go through that program. He noted that this case involved an individual instead of a committee, which is unusual. Mr. Meinrath believed that the proposed \$2,500 fine for a single \$10,000 unreported contribution was sufficient to make the point that the Commission takes these violations seriously. He agreed that Mr. Kay knew his reporting requirements and did not take them seriously, but believed that Mr. Kay would take them seriously in the future.

Commissioner Downey motioned that the stipulation be approved. Chairman Getman seconded the motion. Chairman Getman, Commissioners Scott, Downey, and Knox voted "aye." The motion carried.

Commissioner Scott noted that the Commission should examine the issue of committees versus individuals, and the costs involved in pursuing these cases.

**Item #21. In the Matter of Juan Sanchez, FPPC No. 2000/615. (2 counts.)**

Ms. Canar presented the case, noting that the proposed fine was in accordance with the guidelines adopted by the Commission for SEI expedited cases.

Commissioner Downey explained that the \$600 fine puzzled him because of the seriousness of the violations.

Commissioner Scott questioned whether the respondent should be included in the streamlined program since his compliance had been requested so many times.

Mr. Strumpfer explained that Mr. Sanchez had not been notified of the violations until about 10 months after he should have been notified, so the violations might not be as serious as they look.

Ms. Canar pointed out that the guidelines for SEI expedited cases provide that respondents who promptly file delinquent statements within a reasonable period of time after contact by the FPPC Investigator, are subject to a \$200 - \$300 fine. Since Mr. Sanchez filed promptly after speaking with the FPPC Investigator, he qualified for that fine range. The proposed fine of \$300 per count is at the higher end of the fine range, and considers the fact that Mr. Sanchez did not respond to earlier requests to file.

Commissioner Scott stated that she would not vote for this stipulation. She did not believe it should qualify for the expedited program because the county clerk and FPPC Technical Assistance Division staff had contacted Mr. Sanchez and he had not responded to them. Commissioner Scott thought that the guidelines would not allow a case to be processed through the expedited process when the respondent did not cooperate when contacted.

Mr. Strumpfer stated that the Commission established the guidelines in July 2000, and described them.

Commissioner Scott requested that the Commission reconsider the guidelines, giving more weight to the number of times a respondent is contacted. She stated that people would respond to contact earlier if they thought that the Commission was more serious.

Chairman Getman noted that the Commission had considered that point when the program was developed. The program was designed to take care of a backlog of SEI cases, and to let clerks know that they did not have to contact someone many times. Instead, they could give a respondent one or two warnings and the FPPC Enforcement staff would pursue after that.

Commissioner Scott pointed out that this case was referred to the FPPC in June 2000, and that staff should work together to move the cases more quickly.

Ms. Canar stated that this case moved fairly smoothly, and outlined the progress of the case. She noted that it followed the SEI expedited guidelines adopted by the Commission.

Commissioner Scott suggested that the Commission review the guidelines. She noted that requiring compliance when respondents are contacted by Technical Assistance staff would encourage voluntary compliance sooner and take the pressure off of Enforcement staff.

Mr. Strumpfer responded that he believed that Technical Assistance staff currently resolves cases.

Chairman Getman motioned that the stipulation be approved. Commissioner Downey seconded the motion. Chairman Getman, Commissioners Downey and Knox voted "aye." Commissioner Scott voted "nay." The motion carried by a vote of 3-1.



**Item #22. Failure to Timely File Major Donor Campaign Statement – Streamlined Procedure.**

Chief Investigator Al Herndon explained that the major donor streamlined program was adopted by the Commission on December 8, 2000. He noted that Enforcement staff presented a summary memo describing the guidelines for major donor cases with the March 6, 2001 meeting agenda. The cases presented to the Commission for approval on the April 6, 2001 agenda were processed in accordance with the guidelines.

Commissioner Scott asked staff to explain the method of contacting the respondents and the methods of determining the appropriate fines.

Mr. Herndon explained that the policy created two fine tiers. If respondents filed after the first contact, they would be fined \$400, in accordance with the 1<sup>st</sup> tier policy. If the respondents filed after the second contact, they would be fined \$600, in accordance with the 2<sup>nd</sup> tier policy. The amount of money contributed was never considered in the policies.

In response to a question from Commissioner Scott, Mr. Herndon stated that he was satisfied with the results of the new policy, and did not believe that it should be restructured to consider the amount of the donation at this time. The numbers of violations appear to be dropping off. He suggested that changing the policy could be considered for the next election cycle.

Mr. Strumpfer suggested that it may be too soon to know whether restructuring needed to be done, and suggested that it might be better to go through another election cycle with the current policy before considering changes.

In response to a question, Investigator Jon Wroten explained that the summary of contributions on the back of stipulations represents what respondents have reported on their major donor statement, and may include over-disclosure on the part of the respondent.

Chairman Getman motioned that the following items be approved:

**1<sup>st</sup> Tier Violation - \$400 fine**

- a. In the Matter of Arrowhead General Insurance Agency, Inc., FPPC No. 2001-0008.** (1 count.)
- b. In the Matter of Lightspan, Inc., FPPC No. 2001-0026.** (1 count.)
- c. In the Matter of Palos Verdes Portuguese Bend, LLC / Barry Hon Affiliates, FPPC No. 2001-031.** (1 count.)
- d. In the Matter of Rancho Vista Development Company, FPPC No. 2001-0034.** (1 count.)
- e. In the Matter of RBF Consulting, FPPC No. 2001-0035.** (1 count.)
- f. In the Matter of San Jose Water Company, FPPC No. 2001-0039.** (1 count.)
- g. In the Matter of Dennis Weinberg, FPPC No. 2001-0048.** (1 count.)

## **2<sup>nd</sup> Tier Violation - \$600 fine**

- h. In the Matter of Thomas Anderson, FPPC No. 2001-0007.** (1 count).
- i. In the Matter of Cohen Medical Group, FPPC No. 2001-0014.** (1 count.)
- j. In the Matter of Raley's, FPPC No. 2001-0033.** (1 count.)

Commissioner Knox seconded the motion. Chairman Getman, Commissioners Downey, Knox and Scott voted "aye." The motion carried.

### **Item #23. Legislative Report.**

Commission Counsel and Government Relations Director Mark Krausse distributed an analysis of SB 34.

Mr. Krausse noted that some of the elections and PRA bills have started to move through the Legislature. He explained that some of these bills are "spot" bills that are beginning to be amended into more substantive proposals. He will be presenting analyses of the bills to the Commission as they move through the legislature.

### **SB 34**

Mr. Krausse reported that this bill was amended and that he recommends that no position be taken on the bill at this time.

Mr. Krausse explained that the term-limited member fundraising provision of the bill was the most controversial provision of the bill. Proposition 34 allowed a legislator or any candidate to accept a contribution after the date of an election only if the contribution would be used to retire campaign debt. As a result, legislators in their last term would not be allowed to fundraise for a future office nor for officeholder expenses. SB 34 contained a provision allowing fundraising for these members, but the Legislative Council has provided an opinion to the author stating that last-term legislators can already do the fundraising without changing the law. Consequently, the provision allowing termed-out members to fundraise after the election has been removed from SB 34, leaving it relatively non-controversial.

Chairman Getman clarified that the Commission has not changed its advice on the issue.

Mr. Krausse agreed, noting that the Commission will be asked in June 2001 to consider the issue in a regulation. Commission staff is currently advising that term-limited members are prohibited from fundraising after an election except to extinguish debt or if they have filed to run for another office.

Another provision in SB 34, Mr. Krausse stated, allowed fundraising for debt incurred prior to the passage of Proposition 34 using the rules in effect at the time of the campaign, except in the case of special elections. He noted that there appears to be no objection to that provision.

Mr. Krausse explained that contributions of \$1,000 or more made within 90 days of an election must be reported online within 24 hours. SB 34 would require that any contribution of \$5,000 or more made more than 90 days before an election be reported within 48 hours.

Mr. Krausse noted that there are other small "fixes" to Proposition 34 in SB 34, many of which Commission staff had requested that the drafters of the bill include.

Mr. Krausse stated that Section 83 of Proposition 34 states that none of the changes made in chapter 5 (the campaign contribution/voluntary expenditure limit and several other provisions) would apply to candidates for statewide office. He noted that the drafters agree that it should say that neither the campaign contribution limits nor the voluntary expenditure limits will apply. A legislative provision to clarify the issue is needed. In the absence of that provision, there is confusion about what applies to statewide officers and what does not.

Mr. Krausse recommended that the Commission not take a position on this bill until the question of which provisions apply to candidates for statewide offices is resolved. He expects to have more information by the next Commission meeting.

Commissioner Knox asked whether the Secretary of State's (SOS) office had taken a position on the bill.

Caren Daniels-Meade, from the SOS office, responded that they had not yet taken a position on the bill. She added that they had been working to get some amendments in the bill, but with little success.

The Commission agreed to take no action on the bill at this time.

## **SB 720**

Mr. Krausse recommended that the Commission oppose SB 720 because the bill would create an exemption from the conflicts rules for members of LA Cares, a Los Angeles County public health care system with a financial interest in a governmental decision. He explained that appointed members of boards and commissions frequently are required to represent specific constituents and therefore have some financial interest in matters before them, and that the "public generally" exception in the conflict of interest code deals with those situations.

Commissioner Scott supported the staff position and urged that the Commission accept staff's recommendation. She noted that conflicts are rampant between the managed care companies and the contract entities, and that there is a lot of competition between them. She said that there have already been a lot of enforcement actions in these types of cases.

Mr. Krausse noted that staff hoped to have representatives involved in a regulatory discussion of the issue at the July or August Commission meeting.

There was no objection from the Commission to opposing SB 720.

**Item #24. Executive Director's Report.**

Commissioner Scott requested an enforcement report discussing the status of older enforcement cases.

Mr. Strumpfer responded that staff is emphasizing cases from 1996 to 1998 in staff workloads, while also using discretion on other cases that need to go forward. Their goal is to clear out those older cases, and present them to the Commission within the next few months.

**Item #25. Litigation Report.**

The Litigation Report was taken under submission.

The Commission adjourned to closed session at 10:55 a.m.

**CLOSED SESSION**

**Item #26. Pending Litigation (Gov. Code §§ 11126 (e)(1), 11126 (e)(2)(C).)**

- a. *California ProLife Council Political Action Committee v. Scully.***
- b. *Institute of Governmental Advocates v. Fair Political Practices Commission and Bill Lockyer, Attorney General of California* (Gov. Code §11126(e)(2)(A).)**
- c. Request to commence Civil Action Pursuant to Gov. Code §91007.**

**Item #27. Discussion of Personnel. (Gov. Code § 11126(a)(1).)**

The meeting adjourned at 12:10 p.m.

Dated: May 7, 2001

Respectfully submitted,

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Sandra A. Johnson  
Executive Secretary

Approved by:

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Chairman Getman